

CHAPTER 12
CLAIMS FOR INDIGENT DEFENSE SERVICES

493—12.1(13B,815) Scope. This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

493—12.2(13B,815) Submission and payment of attorney claims.

12.2(1) Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court and interlocutory appeals to the Iowa supreme court, must be submitted on an Indigent Defense Adult Fee Claim Form. Juvenile fee claims must be submitted on an Indigent Defense Juvenile Fee Claim Form. Appellate fee claims must be submitted on an Indigent Defense Appellate Fee Claim Form. The claim forms may be obtained from the clerk of court.

b. A copy of the signed order appointing the attorney to the case.

(1) The appointment order must either be dated by the court or have a legible file-stamp.

(2) Claims for probation violations, parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims.

(3) An appointment order is not necessary if the attorney previously submitted an indigent defense fee claim and was paid on the case.

(4) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the fee limitations.

d. A copy of any court order that affects the amount to be paid.

e. An itemization detailing all work performed on the case for which the attorney seeks compensation.

(1) The itemization must separately state the date and amount of time spent on each activity. Time should be recorded in tenths of an hour. Time listed in hundredths of an hour will be reduced to the nearest tenth of an hour.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) The itemization must be in chronological order.

12.2(2) The state public defender shall forward claims to the department for processing and payment only after all reporting requirements have been complied with and the claim has been approved by the state public defender.

12.2(3) Processing of claims that are not timely claims may be delayed.

12.2(4) Claims for compensation in excess of applicable rates are not payable under the attorney's appointment and will be reduced.

12.2(5) Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment, and that portion will be denied.

12.2(6) If a claim is not timely, services rendered in a fiscal year subsequent to the fiscal year of the date of service will be denied but may be included in a subsequent claim for services.

12.2(7) Claims for services that contain charges that are either not reasonable or not appropriate are not payable under the attorney's appointment and will be denied.

12.2(8) Claims for clerical activities, overhead, preparation of the fee claim form and itemization of services, or preparation of motion and order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied.

12.2(9) Claims seeking compensation without complying with Iowa Code section 814.11(6) or 815.10(5) will be denied.

493—12.3(13B,815) Interim claims. Claims will be paid at the conclusion of the case unless one of the following applies:

12.3(1) *Juvenile cases.* An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case.

12.3(2) *Appellate cases.* A claim for work performed to date by an attorney having an appellate contract with the state public defender may be submitted in appellate cases after filing of the attorney's proof brief. A subsequent claim may be submitted at the conclusion of the case.

12.3(3) *Specific cases.* Interim claims in Class A felony cases, Class B felony cases, cases under Iowa Code chapter 229A, and cases defined in Iowa Code section 902.12 may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

12.3(4) *Change of employment.* If an attorney is changing law firms, the attorney may submit an interim claim to end billing at one firm and start billing at the new firm. Both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and what payments up to a specific date should be made to the law firm.

12.3(5) *Other cases.* In all other cases, claims filed prior to the conclusion of the case will not be paid except with consent of the state public defender.

12.3(6) *Approval of interim claims.* Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999:

Attorney time	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other cases, including all appeals	\$50/hour
		\$25/hour
Paralegal time		

12.4(1) *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney at the above-referenced rate for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the above rates pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) *Applicability to appellate contracts.* This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid \$1,500 for each appellate case to which the attorney is appointed. One thousand dollars is payable following submission of the attorney's proof brief; the remainder, at the conclusion of the case.

12.5(1) *Frivolous appeals.* In an appeal in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$1,000 in each case.

12.5(2) *Juvenile cases/joiner.* In a juvenile appellate case involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case.

12.5(3) *Juvenile petition on appeal.* In a juvenile case in which a petition on appeal is filed, the petition is not considered an appeal for purposes of this rule. The trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on an Indigent Defense Juvenile Fee Claim Form. If an appellate court orders full briefing, the trial court shall appoint an attorney pursuant to Iowa Code. An attorney fee claim for services subsequent to such order must be submitted on an Indigent Defense Appellate Fee Claim Form.

12.5(4) *Unusually complicated cases.* In an appeal that is unusually complicated, the attorney may negotiate with the state public defender for a fee in excess of the fees contained in rule 12.5(13B,815). However, this rule does not require that the state public defender agree to a higher fee in any particular case. The term “unusually complicated” as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. A case in which an application for further review is filed is generally deemed to be “atypical” as that term is used in this rule.

12.5(5) *Application of fee limitations.* The fee limitations and procedures provided in rule 12.6(13B,815) have no application to appellate contracts.

493—12.6(13B,815) *Fee limitations.* The state public defender establishes fee limitations for combined attorney time and paralegal time for the following particular categories of cases:

Class A felonies	\$15,000
Class B felonies	\$3,500
Class C felonies	\$1,200
Class D felonies	\$1,000
Aggravated misdemeanors	\$1,000
Serious misdemeanors	\$500
Simple misdemeanors	\$250
Simple misdemeanor appeals to district court	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation/extradition	\$250
Delinquency (through disposition)	\$1,000
Child in need of assistance (CINA) (through disposition)	\$1,000
Termination of parental rights (through disposition)	\$1,500
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$150
Juvenile petition on appeal	\$500
Postconviction relief—the greater of \$1,000 or ½ of the fee limitation for the conviction from which relief is sought.	

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four children at the same time or the incident that gave rise to the child in need of assistance action is essentially the same, the fee limitation for the attorney representing the parent is \$1,000 for all four proceedings, not \$1,000 for each one.

In an adult criminal proceeding, if an attorney is appointed to represent a client charged with four counts of forgery, the fee limitations for each charge would apply separately. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

In a criminal case with multiple charges, the fee limitation for the more serious charge is the fee limitation for the case.

In a juvenile case in which a petition on appeal is filed, the trial attorney does not need to obtain an appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on an Indigent Defense Juvenile Fee Claim Form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Indigent Defense Appellate Fee Claim Form and is subject to the rules governing appeals.

Nothing contained in this rule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

12.6(1) *Fee limitations/appellate cases.* Except as provided in this subrule, the state public defender establishes a fee limitation of \$2,000 for combined attorney time and paralegal time for all activities in appellate cases filed with the Iowa supreme court.

a. In an appeal in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000.

b. In an appellate case, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 12.5(13B,815).

12.6(2) *Claims in excess of fee limitations.* A claim in excess of the fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the fee limitations prior to exceeding the fee limitations. If authorization to exceed the fee limitations is granted, payment in excess of the fee limitations shall be made only for services performed after the date of submission of the request for authorization to exceed the fee limitations.

12.6(3) *Retroactivity of authorization.* Authorization to exceed the fee limitations shall be effective only as to services performed after an application to exceed the fee limitations is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to timely file the application to exceed the fee limitations.

12.6(4) *Applicability to juvenile cases.* For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,000 for the child in need of assistance case and up to \$1,500 for the termination of parental rights case.

493—12.7(13B,815) Reimbursement for specific expenses.

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigations, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval to hire a certified shorthand reporter, investigator, foreign language interpreter, evaluator or expert prior to incurring any expenses with regard to each.

- b.* A copy of the application and order granting authority accompanies the claim.
- c.* The certified shorthand reporter, investigator, foreign language interpreter, evaluator or expert does not submit a claim for the same services.
- d.* The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be paid to the certified shorthand reporter, investigator, foreign language interpreter, evaluator, or expert.
- e.* A copy of the court order authorizing the expense and approving the dollar amount is attached to the claim.
- f.* In claims for services of certified shorthand reporters, investigators, foreign language interpreters, or experts, if the service provider charges for a “minimum” amount of time, the attorney determines and certifies that no other services and charges will be made by the provider for any portion of that specific time.
- g.* In a claim for the cost of an evaluation, the attorney will be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form.

12.7(2) Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

12.7(3) In the case of an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs 12.7(1) “*b*” to “*d*” shall apply.

12.7(4) Claims for expenses that do not meet these conditions are not payable under the attorney’s appointment and will be denied.

493—12.8(13B,815) Reimbursement of other expenses.

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case:

- a.* Mileage for automobile travel at the rate of 24 cents per mile. The number of miles driven must be listed in the itemization of services or on the claim form. Other forms of transportation costs incurred by the attorney will be reimbursed with prior approval from the court.
- b.* The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight.
- c.* The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals.
- d.* Necessary photocopying at the attorney’s office at the rate of 10 cents per copy. The number of copies made must be listed in the itemization of services or on the claim form.
- e.* Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph.
- f.* Receiving faxes in the attorney’s office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it.
- g.* The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.
- h.* Other specific expenses for which prior approval by the state public defender is obtained.

12.8(2) Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney’s appointment and will be reduced or denied.

493—12.9(13B,815) Court review. An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

12.9(1) Motions for court review. Court review of the action of the state public defender is initiated by filing a motion with the appointing court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be filed with the appointing court within 20 days of the action of the state public defender.

b. The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action that the attorney seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

12.9(2) Hearings. The following shall apply to hearings on motions for court review:

a. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

c. The burden shall be on the attorney requesting the review.

d. The court shall not consider issues not raised in the attorney's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered allowing additional fees, the attorney must file a new Indigent Defense Fee Claim Form with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered, the claimant shall notify the clerk of court of the error and shall reimburse the department for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check made payable to the "Treasurer, State of Iowa" and mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319. The attorney is responsible for notifying the clerk of court of any payment error.

These rules are intended to implement Iowa Code chapters 13B and 815.

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CHAPTER 13 COURT-APPOINTED COUNSEL—ELIGIBILITY GUIDELINES

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